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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9216 of 2005

with

SPECIAL CIVIL APPLICATION No 9323 to 9371 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANGITHEE (GHATLODIA) CO-OP HOUSING SOCIETY LTD

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 9216 of 2005
   MR PS PATEL for Petitioner No. 1
   MR DIPEN DESAI AGP for Respondent No. 1-2
2. Special Civil Application No. 9323 to 9371 of 2005
   MR PS PATEL for Petitioner No. 1
   MR DIPEN DESAI AND MR HD DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/05/2005

ORAL JUDGEMENT

Leave to place on record a copy of the certificate issued by the Deputy Collector, Stamp Duty Valuation, Ahmedabad dated 4.8.2004 closing the proceedings under Section-32-A of the Bombay Stamp Act.

Rule. Shri Dipen Desai, learned AGP waives service of rule on behalf of the respondents in Special Civil Application No.9216 and 9323 of 2005 to SCA No.9347 of 2005 and Shri H.D.Dave, learned AGP waives service of rule for respondents in Special Civil Application No.9348 to 9371 of 2005.

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#. With the consent of the parties, all these petitions of this group are heard together and taken up for final hearing today. As the common questions of law and facts arise in the present group of petitions and therefore, the same are being disposed of by this common judgment.

So far as Special Civil Application No.9216 of 2005 is concerned, the same is filed by Angithee (Ghatlodia) Co-operative Housing Society Ltd. through its President, whereas the rest of the petitions of this group are filed by individual members of the aforesaid Co-operative Housing Society.

In this group of petitions, the petitioners have challenged the legality and validity of the orders passed by the Deputy Collector, Stamp Duty Valuation, City Division-II, Ahmedabad dated 2.3.2000 and 31.12.2003 with respect to the documents No.5270, 5271 and 5274 dated 18.3.1993 passed under Section 32-A of the Bombay Stamp Act.

#. It is the case of the petitioners that the petitioner society had purchased 8201 sq.mtrs of land of Survey No.260-1 and Survey No.260-2 of T.P.Scheme No.2 of Final Plot No.145 situated at village Ghatlodia by way of nine different registered sale deeds dated 18.3.1993. All the sale deeds were presented before the Sub Registrar, Ahmedabad which were given registration number from No.5270 to 5278. It is submitted that so far as the Document No.5270 is concerned, it was for 201 sq.mtrs of land, whereas the document No.5271 to 5278 are concerned, that each was for 1000 sq.mtrs of lands. It is the contention on behalf of the petitioners that considering the valuation of the each piece of land admeasuring 1000

sq.mtrs in question at Rs.1,35,000/-, the stamp duty was paid accordingly. It is the case of the petitioners that so far as the document registration No. 5275 to 5278 are concerned, with regard to those documents also proceedings under Section 32-A of the Bombay Stamp Act were initiated and the Deputy Stamp Duty Valuation, City Division-II, Ahmedabad by order dated 4.8.2004 has considered the market value of the property in question at Rs.1,50,000/- and considering the fact that the petitioners had paid stamp duty on the basis of the market value of Rs.1,35,000/- per one thousand sq.mtrs and had affixed the stamp duty accordingly and the petitioners were directed to pay the additional stamp duty of Rs.2160/- plus Rs.250/- by way of penalty and getting benefit of amnesty scheme, the petitioners were requested to deposit Rs.1830/- only and on payment of Rs.1830/- the proceedings initiated under Section 32-A of the Bombay Stamp Act are closed. Shri P.S.Patel, learned advocate appearing on behalf of the petitioners had produced xerox copy of the aforesaid documents bearing Registration No.5275 to 5278 and the certificate issued by the Deputy Collector, Stamp Duty Valuation, City Division-II, Ahmedabad to the aforesaid extent are directed to be taken on record. Shri P.S.Patel, the learned advocate appearing on behalf of the petitioners has vehemently submitted that all the aforesaid documents are presented and executed on the same day i.e. on 18.3.1993 and that area is also similar i.e. 1000 sq.mtrs and the said lands are from very survey numbers and therefore, the situation is also the same and so far as the documents Registration Nos.5275 to 5278 are concerned, the valuation is considered by the respondent No.1 at Rs.1,50,000/- per one thousand sq.mtrs. and so far as the documents in question i.e. Registration No.5270 is concerned of which the value of document evaluated at Rs.27,135/- for which the market value is considered at Rs.4,14,381/-. So far as the document Registration No.5271 is concerned which was for value of Rs.1,35,000/-, of which, the market value is considered at Rs.21,37,500/- and so far as the document Registration No.5274 is concerned, of which, the market value of the property in question is considered at Rs.35,47,500/- and the petitioners are directed to pay differential duty accordingly. It is submitted that when the very authority has considered the market value of the property in question at Rs.1,50,000/- per one thousand sq. mtrs, considering the market value which is considered while passing the impugned orders is on much higher side and it is absolutely arbitrary and illegal and therefore, the same requires to be quashed and set aside.

#. Shri Dipen Desai and Shri H.D.Dave, the learned AGPs appearing on behalf of the respondents are not in position to controvert and dispute the fact that the very respondent No.1 Deputy Collector, Stamp Duty Valuation, City Division-II, Ahmedabad had passed the order dated 4.8.2004 closing the proceedings under Section 32-A of the Bombay Stamp Act by considering the market value of the property in question at Rs.1,50,000/- per one thousand sq.mtrs. However, they have submitted that those orders are not final and the same are subject to revision and/or suo motu review by the higher authority under Section 53-A of the Bombay Stamp Act.

#. Heard the learned advocates appearing on behalf of the respective parties.

#. It is not in dispute that the petitioner society had purchased in all 8201 sq.mtrs. of lands from Survey Nos.260/1 and 260/2, Final Plot No.145 of T.P.Scheme No.2 situated at village Ghatlodia by way of nine different registered sale deeds on 18.3.1993 which were given registration numbers from No.5270 to 5278. It is also not in dispute that all the documents were executed on the same day and they were with regard to the same area out of the same survey number. Thus, there is no change in the measurement as well as situation of the land. It is also not in dispute that Document bearing Registration No.5275 were also subjected to proceedings under Section 32-A of the Bombay Stamp Act and the proceedings under Section 32-A of the Act were initiated and by order dated 4.8.2004 the very respondent No.1 had passed the order closing the proceedings under Section 32-A of the Bombay Stamp Act by fixing and determining the market value of the lands in question at Rs.1,50,000/- per one thousand sq.mtrs. If that is so, so long as those orders are not set side and / or modified or reviewed by the higher authority, the respondent No.1 could not have passed the order determining the market value other than which is fixed by the orders dated 4.8.2004. Thus, determination of market value of the property in question at Rs. Rs.4,14,381/- in respect of Document - Registration No.5270, Rs.21,37,500/- in respect of the Document Registration No.5271 and at Rs.35,47,500/- so far as the Document - Registration No.5274 is concerned, is nothing but an arbitrary and illegal exercise of powers which cannot be sustained in light of the orders passed by the very respondent No.1 dated 4.8.2004 passed under Section 32-A of the Bombay Stamp Act and the respondents have to consider the said valuation so far as those orders dated 4.8.2004 with regard to documents registration Nos.5275 to 78 are in existence and not disturbed and/or modified

by the higher authorities. Under the circumstances, while quashing and setting aside the impugned orders and remanding the matters to the respondent No.1, the respondents are directed to pass appropriate orders in accordance with law and on merits. It is also observed that it will be open to the petitioners to rely upon the orders dated 4.8.2004 passed in connection with documents registration No.5275 to 5278 and if those orders dated 4.8.2004 are in existence and not disturbed or not modified by the higher authorities and the respondent No.1 is directed to consider the same.

#. For the reasons stated above, all these petitions succeed. The impugned orders dated 2.3.2000 and 31.12.2003 with regard to Documents - Registration Nos.5270, 5271 and 5274 are hereby quashed and set aside and the matters are remanded to the respondent No.1 for passing appropriate orders in accordance with law and on merits after giving an opportunity to the petitioners, more particularly, petitioner of Special Civil Application No.9216 of 2005. It will be open to the society to file reply which may be considered by the respondent No.1. It will also be open for the society to rely upon the orders passed by the respondent No.1 dated 4.8.2004 with respect to Documents (Registration No.5275 - 5278) provided if the said orders are not modified and/or disturbed by the higher authority and the respondent No.1 is also directed to consider the same and deal with the same. The petitioners to file reply within a period of four weeks from today and on receipt of the same, the respondent No.1 is directed to pass appropriate order in accordance with law and on merits after giving an opportunity to the petitioner society through its President.

Rule, in each petition, is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

Date : 13.5.2005 [M.R.Shah, J.]

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